In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 924

LOREN R. GAJEWSKI AND MERVIN A. GAJEWSKI,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in 1963 at which they were defended by retained counsel, petitioners were convicted of conspiring to defraud the United States by obstructing and attempting to defeat the operation of the wheat marketing quota provisions of the Agricultural Adjustment Act of 1938[1] and of causing the filing of false and fraudulent federal income tax returns, all in violation of 18 U.S.C. 1001. Petitioner Loren R. Gajewski was additionally convicted of the offense of making a false, fraudulent and fictitious statement on his 1959 federal income tax return,

[1] 7 U.S.C. 1281 *et seq.*

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also in violation of 18 U.S.C. 1001. On appeal to the Eighth Circuit, where petitioners were again represented by their own counsel, those convictions were affirmed for the reasons carefully developed in the opinion of the court of appeals. *Gajewski* v. *United States,* 321 F. 2d 261. This Court denied certiorari, 375 U.S. 968.

In the course of a subsequent civil proceeding against petitioners for penalties under the Agricultural Adjustment Act of 1938, petitioners' challenge to the constitutionality of the wheat marketing quotas established by that Act was rejected. *Gajewski* v. *United States,* 327 F. 2d 239 (C.A. 8), mandamus denied, 380 U.S. 948.

Still later, while serving the two-year sentence imposed as a result of his criminal conviction, petitioner Mervin A. Gajewski unsuccessfully challenged the validity of his criminal conviction in a habeas corpus proceeding. *Gajewski* v. *Stevens, Warden,* 346 F. 2d 1000 (C.A. 8).

Following their release from confinement, petitioners, acting *pro se,* attempted to attack their criminal convictions collaterally by means of a civil action for a declaratory judgment under 28 U.S.C. 2201. The District Court for the District of Minnesota dismissed their action for want of jurisdiction; petitioners did not appeal.

The instant case stems from petitioners' second *pro se* action in that district court to obtain a declaratory judgment invalidating their criminal convictions. The district court again dismissed their suit, now on *res judicata* grounds as well as for want of jurisdiction.

This time petitioners did appeal, and the Eighth Circuit affirmed the dismissal, *Gajewski* v. *United States,* 368 F. 2d 533 (Pet. App. A1–A4). The court of appeals held, *inter alia,* that the federal declaratory judgment statute is not available as a post-conviction remedy in criminal cases. That court went on, however, to treat petitioners' papers as a motion for relief in the nature of a writ of error *coram nobis.* In this connection the court of appeals ruled that petitioners' contentions had been considered and rejected previously in their earlier appeals and that, therefore, relief in the nature of *coram nobis* invalidating their convictions was not warranted.

In this Court petitioners concede that 28 U.S.C. 2201 supplied no jurisdiction enabling the district court to entertain their suit (Pet. 4). Rather, they assert that such jurisdiction was granted by Rule 60(b) of the Federal Rules of Civil Procedure (*ibid.*). The short answer to that contention is found in the Rules themselves. Rule 82 provides that "[t]hese rules shall not be construed to extend or limit the jurisdiction of the United States district courts or the venue of actions there."

In *United States* v. *Morgan,* 346 U.S. 502, cited by petitioners (Pet. 4), this Court held that relief, by means of a *coram nobis* proceeding, from a judgment of conviction may be available in appropriate circumstances in a federal court to one who has completed the serving of his federally imposed sentence. In so deciding, however, the Court included the caveat that (346 U.S. at 511):

> Continuation of litigation after final judgment and exhaustion or waiver of any statutory right of review should be allowed through this extraordinary remedy only under circumstances compelling such action to achieve justice. * * *

Relying expressly on *Morgan*, the court of appeals properly treated petitioners' papers as applications for *coram nobis* relief. That court's conclusion—that petitioners' allegations seek to raise matters previously considered and rejected in prior appeals and thus present no occasion for the granting of such extraordinary relief—was clearly correct. There is no occasion for further review.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.

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